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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,234	07/24/2003	Robert L. Sutherland	7187CIP	1292

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Steve M. McLary
Riverwood International Corporation
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Marietta, GA 30067

EXAMINER

ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/626,234	Applicant(s) SUTHERLAND ET AL.	
	Examiner Gary E. Elkins	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: the cross reference to prior application no. 10/360,232 at the beginning of the specification should include the current status of the prior application, e.g. the phrase ---now patent no. 6,604,677 issued 12 August 2003--- should be inserted to complete the cross reference to the prior application.

Appropriate correction is required.

2. The abstract of the disclosure is objected to because the legal phraseology "Said" is set forth in line 4. Correction is required. See MPEP § 608.01(b).

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the coupon as set forth in each of claims 9 and 10 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The

replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following phrases are unclear within the claims since a plurality of containers, as disclosed, would necessarily include a plurality of top ends and bottom ends: claim 1, lines 1, 2 and 11, "a plurality of containers having a top end and a bottom end" and "the top end of the containers", claim 3, line 2, "the bottom end of two containers", claim 5, "the bottom end of three containers", claim 11, lines 1, 2, 11 and 14, "a plurality of containers having a top end and a bottom end", "the top end of the containers" and "the bottom end of the containers" and claim 13, lines 1, 2, 11 and 14, same as claim 11.

The following each lack antecedent basis in the claims: claim 1, lines 2, 16 and 17, "the top end of each container" and "the bottom of from two to three containers", claim 4, line 3, "the side panel adjacent said dispenser flap", claim 6, line 3, same as claim 4, claim 7, line 3, "the starting flap", claim 11, lines 2 and 22, "the top end of each container" and "the side panel adjacent said dispenser opening", claim 13, lines 2 and 22, same as claim 11, and claim 14, line 3, "said starting flap".

In claim 1, lines 14 and 15, claim 3, line 3, claim 5, line 4 and claim 11, line 15, “adjoining side panel” is unclear insofar as a plurality of adjoining side panels were previously set forth in the claims, i.e. which of the plurality is being referred to?

The following are each a double inclusion of an element, i.e. the element is being reintroduced into the claims: claim 1, lines 16-19, “two or three containers”, “a fold line” and “an adjoining side panel” (also unclear since a plurality were previously defined in line 7), claim 2, “a fold line” and “a side panel”, claim 3, “two containers”, claim 5, “three containers” and “a fold line”, claim 11, lines 14, 16 and 17, “two containers”, “a fold line” and “an adjoining side panel”, claim 12, “a fold line” and “a side panel” and claim 13, lines 14–16, “three containers”, “a fold line” and “adjoining side panel”.

In each of claims 2 and 12, “which has two dispenser openings” is unclear since these claims appear to be setting forth two dispenser openings in addition to the dispenser opening previously defined in the claims. Based upon the disclosure and drawings, it would appear that these claims intend to claim a second dispenser opening as opposed to second and third dispenser openings.

In claim 7, line 2, “it” is unclear with respect to the previous element referred to.

In claim 14, line 2, “to which is connected by tear line” is grammatically unclear, i.e. to which what, is connected by a tear line?

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Spiegel. Spiegel discloses a carton including a top panel 35, side panel 26, a dispenser flap 29 attached to the top and side panels by a tear line and means 58-60 to enable a person to grasp the flap for tearing it from the carton. No distinction is seen between the carton claimed and that in Spiegel as a result of the claimed intended use to hold containers having a smaller diameter at the top ends of the containers as compared to the diameter at the bottom ends thereof, i.e. the carton of Spiegel is considered to be capable of holding bottle shaped containers. Note is made that the width of the dispenser opening in Spiegel is "sized to be slightly larger than the diameter of the bottom ends of from two to three of the containers" as claimed.

7. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Killy '289. Killy '289 discloses a carton including a top panel 14 (as positioned during opening), side panel 12, a dispenser flap attached to the top and side panels by a tear line 106 and means formed in panel 12 to enable a person to grasp the flap for tearing it from the carton. With respect to claim 5, note is made that the dispenser opening is located at least nearly entirely in the top panel adjacent the fold line 42 as claimed.

8. Claims 1, 2 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hasegawa. Hasegawa discloses a carton including a top panel 58, side panels 6, 8, dispenser flaps 36, 36 attached to the top and side panels by tear lines 38, 38 and means 50, 50 to enable a person to grasp the flaps for tearing them from the carton. No distinction is seen between the carton claimed and that in Hasegawa as a result of the claimed intended use to hold containers having a smaller diameter at the top ends of the containers as compared to the diameter at the bottom ends

thereof, i.e. the carton of Hasegawa is considered to be capable of holding bottle shaped containers. Note is made that the width of the dispenser opening in Hasegawa is "sized to be slightly larger than the diameter of the bottom ends of from two to three of the containers" as claimed.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Killy '289 in view of Killy '143. Killy '289 discloses all structure of the claimed carton except grasping means comprising two tabs formed by V-shaped folding lines, i.e. the grasping means of Killy '289 is formed as single tab. Killy '143 teaches that it is known to make grasping means comprising two tabs 98, 100 formed by V-shaped folding lines. It would have been obvious to make the grasping means of Killy '289 using tabs as taught by Killy '143 since the grasping means of Killy '143 allows the tabs to be completely removed from the finger opening when pushed, i.e. the tab of Killy '289 will tend to return into the finger opening since the fold line is angled.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Spiegel, Hasegawa or Killy '289 in view of Kaufman et al. Each of Spiegel, Hasegawa and Killy '289 discloses all structure of the claimed carton except a coupon attached to the inside of the dispenser flap. Kaufman et al teaches that it is known to attach a coupon to the inside of a

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dispensing flap. It would have been obvious to attach a coupon to the inside of the dispensing flap in any one of Spiegel, Hasegawa or Killy '289 as taught by Kaufman et al to facilitate removal and display of the coupon upon opening of the dispensing flap.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Spiegel, Hasegawa or Killy '289 in view of Dieckow. Each of Spiegel, Hasegawa and Killy '289 discloses all structure of the claimed carton except a coupon attached to the outside of the dispenser flap. Dieckow teaches that it is known to attach a coupon to the outside of a closure flap which is used to open a container to dispense the contents. It would have been obvious to attach a coupon to the outside of the dispensing flap in any one of Spiegel, Hasegawa or Killy '289 as taught by Dieckow to facilitate removal and display of the coupon upon opening of the container closure. Disposal of a coupon on the closure flap or dispensing flap as compared to other areas on the container is considered prima facie obvious to one of ordinary skill in this art insofar as the closure/dispensing flap is the point of focus for the user when it is desired to open the container and thus directs the attention of the user to the coupon.

Allowable Subject Matter

13. Claims 3, 4, 7 and 14, as best understood in view of paragraph 4 above, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

14. Claims 11 and 12, as best understood in view of paragraph 4 above, would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Conclusion

The remaining cited prior art is illustrative of the general state of the art.

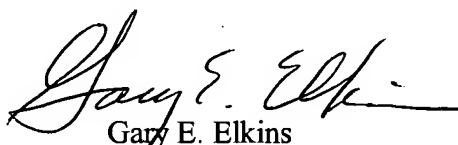
In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

If in receiving this Office Action, it is apparent that certain documents are missing, e.g. copies of references cited, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703)306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at (703)308-1078.

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (703)308-1034. The Examiner can normally be reached Monday, Tuesday and Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (703)308-2572.


Gary E. Elkins
Primary Examiner
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